Nos. 666, 667, 668, 674 and 675

In the Supreme Court of the United States

OCTOBER TERM, 1944

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, PETITIONER

v.

UNITED STATES OF AMERICA

THE BAY COUNTIES DISTRICT COUNCIL OF CARPENTERS, ETC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

LUMBER PRODUCTS ASSOCIATION, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ALAMEDA COUNTY BUILDING AND CONSTRUCTION TRADES COUNCIL, PETITIONER

v.

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OPINIONS BELOW

The district court did not render an opinion. The opinion of the Circuit Court of Appeals (R. 1674) is reported in 144 F. (2d) 546.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on August 23, 1944 (R. 1697) and petitions for rehearing were denied on October 14, 1944 (R. 1698). Petitions for writs of certiorari were filed in Nos. 666, 667, and 668 on November 11, 1944, and in Nos. 674 and 675 on November 13, 1944. These petitions were granted on January 2, 1945. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and as modified by Rule XI of the Criminal Appeals Rules.

QUESTIONS PRESENTED

1. Whether the district court correctly charged the jury that an agreement between a group of millwork manufacturers and unions representing their employees that the manufacturers will not purchase millwork made in other States under a wage scale lower than that paid by the manufacturers, violates the Sherman Act, regardless whether the agreement grew out of an employer-employee wage dispute or whether the motive of the unions in joining the combination was to promote their self-interest.

2. Whether an indictment charging that the defendant unions, in order to secure acceptance of their wage demands by a group of manufacturers of millwork, combined with the latter to exclude from the local market millwork made in other States under a lower wage scale and to police and enforce this agreement jointly with the manufacturers, sets forth a violation of the Sherman Act, not within any immunity given by the Clayton Act.

3. Whether the district court correctly instructed the jury with respect to the liability of a labor organization under the Sherman Act for acts done by its agents or representatives.

STATUTES INVOLVED

Section 1 of the Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, as amended by the Act of August 17, 1937, 50 Stat. 693, 15 U. S. C. sec. 1, provides in part as follows:

> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal, shall be deemed guilty of a misdemeanor, * * *.

Section 20 of the Act of October 15, 1914, 38 Stat. 738, 29 U. S. C. sec. 52, known as the Clayton Act, provides in part as follows:

> no restraining order or injunction shall be granted by any court of the United

States, or a judge or the judges thereof, in any case between an employer and employees, * * * involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property * * *.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States.

Section 6 of the Norris-LaGuardia Act (47 Stat. 71, 29 U. S. C. sec. 106) is set forth on p. 44, *infra*.

STATEMENT

This case concerns the validity of an indictment charging a conspiracy to restrain interstate commerce in millwork and patterned lumber, in violation of Section 1 of the Sherman Act, and the validity of the convictions, after trial, of certain of the defendants named in the indictment. Count two of the indictment, which charged a conspiracy to monopolize a part of the interstate commerce in such products, was dismissed as to all of the defendants on motion of the Government.[1]

The indictment, returned in June 1940 (R. 113, 115, 1133),[2] named as defendants a number of concerns manufacturing millwork and patterned lumber[3] (hereinafter referred to as millwork) in

[1] Count two of the indictment was dismissed prior to trial as to all defendants who stood trial (R. 111). Count two was later dismissed as to the defendants who had pleaded *nolo contendere* after they had been permitted to withdraw their pleas as to count two (R. 1403).

[2] The record also erroneously gives the year as 1942 (R. 37).

[3] Millwork and patterned lumber was defined in the indictment to mean "lumber which has been planed, cut, or assembled into standard or special patterns or forms, such as moulding, sash, doors, tongue-and-groove pattern, shelf pattern, flooring, casing, rustic ceiling, rustic siding, and other wood products prepared for use in the construction of dwellings, buildings, fixtures, and store fronts. It shall also include all wood and the products thereof used in the construction of prefabricated buildings."

the San Francisco Bay Area[1] (referred to herein as the Bay Area or Area), certain individuals connected with such manufacturers, and three trade associations performing various services on their behalf (R. 8–18, 22–23). These defendants will sometimes be referred to as the manufacturer group. The indictment also named as defendants an international labor union, four local labor unions affiliated with the international union, three trades councils, and certain of their members and representatives (R. 18–21, 23–25). They will sometimes be referred to as the labor group.

After demurrers to the indictment (R. 42, 52, 79–80, 92) had been overruled (R. 87, 103), some members of the manufacturer group pleaded *nolo contendere* (R. 107–109). The case then went to trial as to the remaining defendants. During the trial the case was dismissed as to some of these defendants (R. 598, 1122) and the jury returned verdicts of guilty against all of the others (R. 1170–1171, 1364–1365). Following entry of judgments on the *nolo contendere* pleas and jury verdicts (R. 1366–1406), some of the manufacturer group who had pleaded *nolo contendere* and all of the convicted members of the union group appealed to the Circuit Court of Appeals for the Ninth Circuit (R. 1407–1435).

[1] San Francisco Bay Area was defined in the indictment to mean "the counties of San Francisco, Marin, Contra Costa, Alameda, Santa Clara, and San Mateo, of the State of California."

That court reversed the convictions of three individuals of the labor group upon the ground that they had acquired immunity by testifying before the grand jury (R. 1689–1695), and affirmed the judgments of conviction of all other defendants who had appealed (R. 1697). Petitioners in this Court include all those whose convictions were thus affirmed.[5]

THE INDICTMENT

The following is a summary of the principal allegations of count one of the indictment:

There are numerous manufacturers of millwork located in Washington, Oregon, and other States outside of California who make millwork in large quantities, utilizing the most efficient available machines and mass-production methods under which millwork is often completed in the same operation as the manufacture of lumber from the log (R. 7–8). The defendant manufacturers and others located in the Bay Area are not mechanically equipped to make millwork of as high quality or as efficiently or economically (R. 8). In addition, manufacturers of millwork in States other than California, while employing

[5] Petitioners in Nos. 668 and 675 are members of the manufacturer group. Petitioner in No. 666 is the defendant international union, petitioner in No. 674 is one of the defendant Trades Councils, and petitioners in No. 667 are the remaining members of the labor group whose convictions have been affirmed.

union labor and operating entirely union shops, have a lower wage scale than manufacturers in the Bay Area (R. 8). Prior to the formation of the defendants' conspiracy 80% of the millwork used in that Area was manufactured in States other than California, whereas since the conspiracy has been formed less than 10% of the millwork used in the Area comes from outside of California (R. 6–7).

Substantially all of the millwork manufactured in the Bay Area is made by the defendant manufacturers (R. 25). They employ only millworkers affiliated with the defendant unions (R. 25). These unions control the supply of workmen available for manufacturing and installing millwork in the Bay Area (R. 25–26). Since the defendant unions are represented on the defendant Trades Councils, and these Councils are composed of representatives of substantially all of the local building and construction trade unions in the Bay Area, the defendant unions are able to obtain from these other unions and from the Trades Councils assistance and cooperation in securing compliance with the rules, regulations, and policies which the defendant unions promulgate (*ibid.*).

Paragraph 26 of the indictment charges in general terms that the defendants have, since about September 1, 1936, been engaged in a conspiracy to restrain interstate commerce in millwork (R. 26–27). Paragraph 27 then declares

that the "general purpose, object, and effect" of this conspiracy has been and is: (a) to prevent manufacturers of millwork located without California from selling and shipping their millwork in interstate commerce into the Bay Area, (b) to prevent lumber yards and jobbers in the Bay Area from purchasing millwork manufactured in States other than California, and (c) to raise, fix, stabilize, and maintain prices for millwork shipped in interstate commerce into California for sale in the Bay Area (R. 27–28).

Paragraph 28 alleges that the defendants have employed the following means and methods, among others, for the purpose of effectuating their conspiracy: In 1936 the defendant manufacturers agreed to accede to wage scale demands of the defendant unions, "in return for which" the defendant unions agreed to prevent the sale and shipment of millwork into the Bay Area by manufacturers located outside California (R. 28). In September 1936 the parties entered into a written agreement which covered the wages to be paid and provided that, except as to certain named items, "no material will be purchased from, and no work will be done on any material or article that has had any operation performed on same by Saw Mills, Mills, or Cabinet Shops, or their distributors that do not conform to the rates of wage and working conditions of this agreement" (R. 28–29). These provisions have been continued in effect by subsequent agreements and under-

standings (R. 29). For the purpose of enforcing these provisions, a joint conference board composed of representatives of both the defendant manufacturers and defendant unions has held regular weekly meetings and the defendants have at various times interchanged information relative to interstate shipments of millwork into the Bay Area (R. 29–30). They have also counseled together, advised and agreed upon courses of action in connection with the enforcement of the provisions of their agreement (R. 30). They have prevented the sale and delivery of millwork shipped in interstate commerce to the Bay Area and have, by means of pickets and threats to picket, forced cancellation of orders for the shipment of millwork into the Area from other States and prevented the unloading of freight cars bearing such millwork (R. 30–31). In furtherance of their conspiracy, the defendants have at regular intervals published and circulated among manufacturers (including defendant manufacturers), jobbers and lumber yards in the Bay Area, lists setting forth the agreed prices to be charged for millwork in the Bay Area; and these lists have been used as price lists in the sale of millwork in the Area by such manufacturers, jobbers and lumber yards (R. 31–32).

In entering into the conspiracy the defendant unions "were not attempting to enforce or protect the right to bargain collectively nor did they

act in the course of a legitimate labor dispute as to wages, hours, and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the said combination and conspiracy was directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area and to maintain arbitrary, artificial, and noncompetitive prices" (R. 32).

The conspiracy has had the effect of preventing persons in the Bay Area from purchasing millwork manufactured outside of California and has resulted in unduly increasing the prices of millwork used in the Bay Area (R. 33).

THE EVIDENCE

The evidence in support of the allegations of the indictment may be summarized as follows:

In 1936 the manufacturer group and the union group, through their representatives, collectively met, negotiated, and entered into an "Employer-Employee Agreement of Wages, Hours and Working Conditions" (R. 280–288). This agreement provided that, except as to certain designated items—

> it is agreed that no material will be purchased from, and no work will be done on any material or articles that has had any operation performed on same by Saw Mills, Mills or Cabinet Shops, or their distributors that do not conform to the

> rates of wage and working conditions of this Agreement (R. 283–284).

A succeeding employer-employee contract entered into around the middle of 1938 also contained an exempt list and an identical restrictive provisions (R. 289). Subsequently, in 1938, a superseding employer-employee agreement was entered into which retained an exempt list but altered the language of the restrictive provision to read (R. 293):

> it is agreed that no material will be purchased from, and no work will be done on any material or article that has been made under conditions unfair to members of the United Brotherhood of Carpenters and Joiners of America, or Employers of members of the United Brotherhood of Carpenters and Joiners of America signators hereto.

After the expiration of the 1938 contract, the restrictive agreement was not contained in the written employer-employee contracts. However, there was a verbal agreement between the manufacturer group and the union group that the manufacturer group would not purchase and the union group would not work on any millwork produced under a lesser wage scale (R. 216, 221, 235, 415–416, 478).

While there was some conflict in the evidence as to the genesis and the objective of the foregoing restrictive agreements, there was evidence

from which the jury could have found the following: The purpose of the restriction "was to create a sort of a Chinese Wall around the San Francisco Bay Area" (R. 216, 235, 238) for the protection of the manufacturer group (R. 388, 534). This group objected to the wage demands of the union group in 1936 on the ground that the manufacturers could not accede to the demands and meet the competition of manufacturers, located outside the Bay Area, operating under a lower wage scale (R. 517, 789–790, 991). After protracted conferences (R. 505, 517), the manufacturer group stated they were willing to concede a reasonable wage increase "provided some way could be worked out that would protect them against outside competition" from "manufacturers who were operating under a lower wage scale" (R. 517, 235). The union group agreed to do all in their power to exclude outside material if the manufacturer group agreed to their demands (R. 373). Both groups have continually recognized that the various wage provisions and the restrictive agreement were reciprocal (R. 398, 216, 235, 385). In one instance the manufacturer group insisted upon and received increased union assistance in enforcing a boycott by the union group of banned material (R. 420, 552–553).

The written agreements of 1936 and 1938 specifically excluded from the operation of the re-

strictive provision certain enumerated materials and articles which were referred to as being on the exempt list (R. 284, 289–290, 293–294). These exemptions were included at the request of the manufacturer group (R. 792, 832, 941). Each manufacturer desired to exempt those items which it did not manufacture and was required to purchase (R. 790, 592). Since each manufacturer did not purchase the same items, the manufacturers were in disagreement on the composition of the exempt list, a disagreement which was resolved by agreement between the manufacturers and the union group (R. 790, 818, 892, 941).

The manufacturer and union groups cooperated in enforcing the restrictive agreement. They established a conference committee, composed of representatives of each group, which dealt with the enforcement of the agreement (R. 366, 384, 405–406, 549, 393, 428, 329). The manufacturer group advised the union group when millwork banned by the agreement was brought into the Bay Area (R. 405–406); joined with representatives of the union group in a conference with a third party over the disposition of banned material brought into the Area (R. 353–354, 361); and joined with the union group in imposing sanctions on a third party (R. 366). In this latter instance the manufacturer group agreed to cease manufacturing for a local dealer who purchased some of its mill-

work requirements outside the Area, and the union group approached several contractors and obtained their promise not to purchase any of the local dealers' products (R. 366).

The union group was active in enforcing the restrictive agreement, using the following, among other, methods: (1) Union representatives advised purchasers of millwork in the Area that they must purchase all except exempted items from local manufacturers and, in some instances, that, if they failed to do so, their places of business would be picketed (R. 254–256, 267–268, 309, 319–320, 588). (2) Purchasers of millwork produced outside the Area were requested to appear before the Trades Council for a hearing on whether they should be placed on the "We Do Not Patronize" list (R. 334, 346–347); and in certain cases motions were adopted to place their names on such a list (R. 418, 420). (3) Union representatives attached signs reading "HOT CARGO" and "HOT LUMBER" to millwork brought into the Area (R. 199–200, 327–328, 588). (4) Purchasers of millwork produced outside the Area were required to ship it out of the Area or have it "rerun" by a local manufacturer (R. 368, 381, 386, 404, 405, 430). A "rerun" operation accomplishes no alteration of the millwork (R. 368, 381). When the union representatives discussed the restrictions on bringing millwork into the Area with third parties, whether purchasers or sellers, and when they discussed

their activities in this connection in their meetings, they frequently referred to their agreement with the manufacturer group (R. 421, 478, 494, 499, 500, 517, 518).

The restrictive agreement was consistently and knowingly applied to millwork manufactured outside California (R. 267–268, 308–310, 317–318, 327–328, 335–336, 345, 349–350, 355–356, 380–381, 408–410, 467–468, 589–590), and the effect of petitioners' activities was to prevent purchasers in the Bay Area from purchasing millwork produced outside of California and to prevent manufacturers located outside of California from selling millwork in the Bay Area (R. 258, 261–262, 309, 312, 317–318, 319, 356, 393), and to require purchasers in the Area to pay a substantially higher price for millwork than they would have had to pay if they bought from manufacturers located outside of California (R. 323–325, 357, 367–368, 380–382, 409, 436, 434).

SUMMARY OF ARGUMENT

I

The district court correctly instructed the jury that if it found that the defendant manufacturers had combined with the defendant unions to prevent importation into the Bay Area of millwork made in other States under a wage scale below the scale prevailing in the Area, such a combination would violate the Sherman Act, and the fact that the defendant unions joined in the combination to

promote their self-interest would constitute no defense. A combination thus to restrain commercial competition and to subject the producers of low-cost goods to an organized boycott imposes restraints of trade of a kind which have been repeatedly held to be outlawed by the Sherman Act.

Labor organizations are not, as such, excluded from the prohibitions of the Sherman Act. The Act does not permit labor unions to enter into combinations having the purpose and effect of controlling supply or price in interstate markets, even though by this means some protection is given to the wage rates of the union members. *United States* v. *Brims*, 272 U. S. 549; *Coronado Coal Co.*, v. *United Mine Workers*, 268 U. S. 295. While this Court has said that the Sherman Act is not aimed at such curtailment of price competition as results from eliminating differences in labor standards (*Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 503-504), the present case does not involve mere standardization of wage rates and working conditions among a group of employers through the medium of an employer-employee agreement. Rather it involves combination between the two groups to boycott the trade of third persons if their wage scale is below that of the combining parties.

Nor does the combination here come within immunities conferred by Section 20 of the Clayton Act. That section validates specifically enumerated practices of labor unions by which labor

has customarily exercised the power of collective action in disputes with employers concerning terms and conditions of employment. But when labor combines with non-labor groups to utilize the united power of management and labor to suppress the trade of others, such a combination is not rendered immune either by the language or the purposes of the Act. See *United States* v. *Hutcheson,* 312 U. S. 219, 232. In an analogous situation, the authority given to farmers' cooperatives by the Capper-Volstead Act to market collectively has been held not to permit a cooperative to combine with outside groups to control the supply or price of the product which the cooperative markets. *United States* v. *Borden,* 308 U. S. 188. In like manner the authorization of collective action by labor in controversies with employers, which Congress has protected by the Clayton Act and later legislation, should not be construed as authorizing them to combine with a non-labor group in direct restraint of interstate trade. In determining the scope of the immunities given by the Clayton Act, effect must be given to the long-continued policy of Congress, embodied in the Sherman Act, to protect interstate trade against monopolization, price fixing, and kindred evils.

II

The indictment charges that the defendant unions agreed to participate in a combination

which had the effect and purpose of restraining commercial competition, controlling supply and raising prices, in return for the defendant manufacturers' acceptance of the wage scale sought by the unions. It further charges that the defendant unions joined in and carried out this combination solely to prevent importation into the Bay Area of goods made under a wage scale lower than that of the Area, and to maintain noncompetitive prices within the Area. The indictment thus charges, in effect, that labor agreed to lend its aid in enforcing a ban against low-cost goods in consideration of acceptance of its wage demands by the defendant manufacturers.

This type of combination, whereby labor joins with the employers in an agreement to eliminate competitive goods from the employers' home market, clearly follows within the reservation expressed by this Court in the *Hutcheson* case concerning the non-application of the immunities of the Clayton Act to combinations between labor and non-labor groups. And, apart from the Clayton Act, the combination charged in the indictment plainly comes within the ban of the Sherman Act.

III

The trial court charged the jury that the labor union defendants could be held responsible for the acts of their officers or agents done on their behalf and within the scope of their authority, or

while performing duties actually delegated to them. This instruction correctly applies the principles established in the *Coronado* cases and embodied in Section 6 of the Norris-LaGuardia Act. The statutory requirement that there be "actual authorization" of the acts done is shown by its legislative history to be satisfied by the conduct of an agent within the scope of his authority. There was evidence from which the jury might infer that the Alameda Council and the United Brotherhood (the two petitioners as to which the question is presented) were parties to the conspiracy under the above test.

ARGUMENT

I

THE DISTRICT COURT CORRECTLY INSTRUCTED THE JURY THAT THE SHERMAN ACT PROHIBITS AN AGREEMENT BETWEEN A MANUFACTURER GROUP AND A UNION GROUP THAT THE MANUFACTURER GROUP WILL NOT PURCHASE IN INTERSTATE COMMERCE GOODS PRODUCED UNDER A LOWER WAGE SCALE THAN THAT MAINTAINED BY THE MANUFACTURER GROUP

The instruction of the trial court most unfavorable to the petitioners who stood trial permitted the jury to convict if they found an agreement between the defendant manufacturers and defendant unions under the terms of which the manufacturers agreed not to purchase millwork, including millwork shipped from other States, manufactured under a lower wage scale than that

prevailing in the Bay Area (R. 1150). In other instructions to the jury or evidentiary rulings (R. 1150–1152, 824–826) the court ruled, in effect, that it is no defense to such an agreement that it was entered into as an incident to a dispute between employers and employees concerning terms or conditions of employment or that the union group participated in the agreement for the purpose of promoting their own self-interest. We shall therefore assume these additional elements are a part of the instruction to which we have referred.

We shall consider, first, whether the agreement that the defendant manufacturers will not purchase goods made under a lower wage scale than that paid by these manufacturers violates the Sherman Act, apart from any immunity conferred by the Clayton Act, and, second, whether the agreement is given immunity by the latter act.

The boycott agreement clearly falls within the prohibition of the Sherman Act. It restrained not only the trade of the defendant manufacturers, by restricting the goods which they might purchase in interstate commerce, but also the interstate trade of the out-of-State producers whose goods were boycotted. The necessary purpose and effect of the agreement was to eliminate low-cost goods as a competitive factor in the Bay Area and to increase the price to the ultimate consumer or purchaser. The agreement narrowed the outlets to which some manufacturers could sell and the sources from which others could buy;

it subjected producers having a lower wage scale to an organized boycott; and it directly suppressed competition from the sale of the goods of these latter producers. Agreements of this character have been repeatedly held to be among those at which the Sherman Act is directed. *Fashion Originators' Guild, Inc.* v. *Federal Trade Commission*, 312 U. S. 457; *Eastern States Retail Lumber Dealers' Assn.* v. *United States*, 234 U. S. 600; *Montague & Co.* v. *Lowry*, 193 U. S. 38.

That some of the petitioners are labor unions and that an objective of the agreement, so far as they were concerned, may have been to protect the wage rates paid to the members of the unions does not, without more, immunize the combination from the Sherman Act. It can no longer be contended that Congress has excluded labor organizations and their activities from the operation of the Act. *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 487–489, and authorities there cited. In view of "the vagueness of its language, perhaps not uncalculated", the extent to which the Sherman Act applies to the activities of labor unions must be determined by the courts "in the light of its legislative history and of the particular evils at which the legislation was aimed." *Id.*, p. 489. The decisive consideration has been the purpose of Congress to outlaw "restraints to free competition in business and commercial transactions which tended to restrict production, raise prices or otherwise control the market to the detriment

of purchasers or consumers of goods and services". *Id.*, p. 493. This is shown by the line of cases illustrated by *United States* v. *Brims*, 272 U. S. 549. That case held that an agreement between a labor group and a non-labor group not to purchase goods shipped in interstate commerce is not removed from the prohibitions of the Sherman Act merely because one of its purposes is to protect the wage rates of the agreeing parties. There manufacturers of millwork in Chicago, local building contractors who purchased millwork and had it installed, and representatives of a union whose members were employed by both manufacturers and contractors, formed a combination under which the manufacturers and contractors agreed to employ only union members and the latter agreed to refuse to install millwork made by non-union labor, a large part of which came from factories in other States. This Court held that such a combination violated the Sherman Act even though a purpose of the agreement was to eliminate the competition of "nonunion mills which were paying lower wages" (272 U. S. 549, 552).

Similarly, an earlier case, *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295, 310, had held that a combination to keep certain goods out of interstate commerce would violate the Sherman Act if its purpose was to prevent the competition in interstate market of non-union goods affecting "injuriously the maintenance of wages

for union labor." (This holding, it may be noted, was referred to and at least impliedly approved in *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 511.)

We do not believe that the authority of these holdings has been impaired by more recent decisions of this Court. Petitioners place considerable reliance upon the statement in the *Apex* case (310 U. S. at 503–504) that "elimination of price competition based on differences in labor standards" has not been considered to be "the kind of curtailment of price competition prohibited by the Sherman Act." But it is clear from the context, from the cases cited (*Levering & Garrigues Co.* v. *Morrin,* 289 U. S. 103; *American Steel Foundries* v. *Tri-City Central Trades Council,* 257 U. S. 184, 209; *National Association of Window Glass Mfrs.* v. *United States,* 263 U. S. 403), and from the amplificatory footnote on page 504, that the Court was referring only to such elimination of price competition as is involved in employer-employee agreements designed to establish industry-wide wage scales and other conditions of employment. As is stated in the footnote, its enactments support the conclusion that "Congress does not regard the effects upon competition from such combinations and standards as against public policy or condemned by the Sherman Act." The Court obviously was not concerned with an agreement, such as is here involved, to suppress competition, not by eliminating wage differentials

among the parties themselves, but by boycotting and excluding from interstate commerce goods made under a lower wage scale by third persons not party to the agreement. Such an agreement involves more than an incidental restraint upon commerce: it represents an attempt by the parties directly to control by joint action the movement and supply of goods of others in interstate commerce. Apart from the Clayton Act at least (the effect of which we shall shortly consider), the mere fact that such an agreement promotes the self-interest of the parties concerned does not insulate it from the condemnation of the Sherman Act. *Fashion Originators' Guild, Inc.* v. *Federal Trade Commission*, 312 U. S. at 467–468.

The Court's opinion in the *Apex* case explicitly recognized that a combination to attain an objective declared unlawful by the Sherman Act does not become lawful merely because a labor union is a party thereto (p. 501): "This is not a case of a labor organization being used by combinations of those engaged in an industry as the means or instrument for suppressing competition or fixing prices." Significantly, we believe, the *Brims* case was cited at this point. The Court went on, in the *Apex* opinion, to emphasize factors none of which is present in the case at bar. There "the combination or conspiracy did not have as its purpose restraint upon competition in the market" for the employer's goods; its object was "to compel" the

employer "to accede to the union demands and an effect of it, in consequence of the strikers' tortious acts, was the prevention of the removal of (the employer's) product for interstate shipment"; and "the delay of those shipments was not intended to have and had no effect on prices of hosiery in the market" (p. 501). Here, however, the purpose and effect of the combination was to suppress competition in interstate commerce of goods made by others; its object was not to compel employer accession to any union demands for raising wages, reducing hours, union recognition, or other labor objectives; it was intended to have and had the effect of raising prices and reducing competition. In these circumstances we think that the decision in the *Apex* case affords no basis for immunizing the combination involved here.

It is further submitted that Section 20 of the Clayton Act does not legalize the combination here under which the manufacturer group agreed not to purchase millwork produced under a lower wage scale than that in effect in the Bay Area. Section 20 declares lawful certain specified acts and practices when they grow out of a dispute between employers and employees concerning terms or conditions of employment. It may be conceded that the validity of the convictions of the petitioners who stood trial must be tested upon the assumption that the agreement not to purchase

low-cost and low-wage-scale millwork grew out of such a dispute.*

The acts which Section 20 declares to be lawful are:

(1) Terminating any relation of employment, ceasing to perform any work, or persuading others by peaceful means so to do.

(2) Attending at any place for the purpose of peacefully obtaining or communicating information or peacefully persuading any person to work or to abstain from working.

(3) Ceasing to patronize or to employ any party to a labor dispute or persuading others by peaceful and lawful means so to do.

(4) Paying to or withholding from any person engaged in such a dispute any strike benefits.

(5) Peaceably assembling in a lawful manner and for lawful purposes.

(6) Doing anything which might lawfully be done in the absence of a labor dispute by any party thereto.

The acts thus given immunity include the usual weapons employed by labor in dealing with employers. As this Court stated in the *Hutcheson* case (pp. 229–230), Section 20 "withdrew from

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* This assumption is required by the district court's rulings, which withdrew from jury consideration matters which would be pertinent if the illegality of the petitioners' conduct were dependent upon a showing that the agreement which they made did not grow out of a labor dispute as defined in Section 20.

the general interdict of the Sherman Law specifically enumerated practices of labor unions." The Court also quoted (p. 229) from Justice Brandeis' dissent in *Duplex Co.* v. *Deering*, 254 U. S. 443, 484, the statement that the Clayton Act "was designed to equalize before the law the position of workingmen and employer as industrial combatants."

The enumerated practices, read in the light of the objectives of the statute, do not, however, embrace an alliance between labor and management to boycott the trade of third persons. It is true that under the broad definition of parties to a labor dispute contained in Section 13 of the Norris-LaGuardia Act, the out-of-State producers of millwork would be parties to a labor dispute between the Bay Area manufacturers and their employees. It is also true that Section 20 immunizes "ceasing to patronize" a party to a labor dispute or "recommending, advising, or persuading others * * * so to do." But the quoted words are apt to describe the boycotting of a product by ultimate purchasers or consumers and propagandizing on behalf of such boycott. A definite agreement of groups of manufacturers and unions to boycott goods produced by third persons is not within the traditional concept of "recommending, advising, or persuading" others to cease to "patronize." Such conduct lies even further beyond the objectives which the Clayton Act was designed to achieve.

We believe that this Court may have contemplated such alliances between labor and management to impose restraints upon the trade of third persons when it said in the *Hutcheson* case (p. 232):

> So long as a union acts in its self-interest *and does not combine with non-labor groups,* the licit and illicit under § 20 are not to be distinguished by any judgment regarding the wisdom or unwisdom, the rightness or wrongness, the selfishness or unselfishness of the end of which the particular union activities are the means. [Italics supplied.]

This interpretation of the opinion is supported by the Court's citation of *United States* v. *Brims,* 272 U. S. 549, where, as has been noted (*supra,* pp. 23–24), a combination between labor and non-labor of the same character as the present one was held to violate the Sherman Act. Significantly, the Court cited this case in a footnote to the words italicized in the above quotation.

Petitioners' contention that the Clayton Act immunizes their combination is closely analogous to the claim advanced by a farmer's cooperative in *United States* v. *Borden,* 308 U. S. 188, that the Capper-Volstead Act operated to exempt it from the Sherman Act. The indictment in that case charged the cooperative with combining with major distributors of milk and other persons to maintain noncompetitive prices for payment to

all producers of milk marketed in the Chicago area, to compel independent distributors to exact like prices from their customers, and to control the supply of milk brought into Chicago. The cooperative relied as a defense upon Section 1 of the Capper-Volstead Act (7 U. S. C. sec. 291), which authorizes farm cooperatives to market their products collectively.[7] This Court nevertheless held (pp. 204–205) that the right given to the members of farmers' cooperatives to unite in marketing their product and "to make the contracts which are necessary for that collaboration" did not permit cooperatives to combine with "other persons" in restraint of trade.

Similarly, the petitioners here argue that, since the Clayton Act permits labor unions to combine to raise wages and since payment of lower wages by competitors of their employers may adversely affect achievement of this objective, the Act is to be construed as sanctioning agreement with employers to exclude the competitive product from the market. But the objective of the Capper-

[7] Section 2 of the Act (7 U. S. C. sec. 292) authorizes the Secretary of Agriculture to issue a cease and desist order, following an administrative hearing, if he finds that any cooperative is monopolizing or restraining interstate commerce to such an extent that the price of any agricultural product is "unduly enhanced". The Court in the *Borden* case held (p. 206) that this procedure was merely a qualification of the authority conferred by Section 1 and therefore did not bar or postpone prosecution under the Sherman Act of conduct not authorized by Section 1 of the Act.

Volstead Act, attainment by members of a cooperative of higher prices for their product by eliminating competition among themselves in the marketing of goods, is also promoted if the cooperative is permitted to enter into agreements which bring the price at which others sell the same product into alignment with the price at which the cooperative desires to sell. In fact, sale of competitive goods at lower prices operates more directly to defeat the aim which the cooperative seeks to achieve through collective action than does sale of competitive goods produced under a lower wage scale operate to defeat the objective of achieving high wages through collective bargaining.

In the *Borden* case, however, this Court refused to read into the Capper-Volstead Act implied authority to combine with outsiders. By parity of reasoning, we submit, implied authority to labor unions to combine with non-labor groups to effect restraints of trade not given any direct sanction by the Clayton Act should not be read into Section 20 of the latter act. We do not believe that Congress, in conferring upon farmers and upon labor unions analogous immunities from the Sherman Act, intended to grant to combinations in which labor unions participate a blanket immunity from the Sherman Act. It can hardly be supposed that, in determining the applicability of the Clayton Act to combinations involving labor unions, the exclusive

test is whether such unions acted in their self-interest. The long-continued policy of Congress, embodied in the Sherman Act, to prohibit price enhancement and monopolization of trade by means of combination, must also be given effect.

The Clayton Act leaves labor free, in the absence of violence or other illegal conduct, to use strikes, picketing, and boycotts, and to solicit aid in support thereof from the general public; and it is no violation of the Sherman Act to enter into agreements with a group of employers concerning uniform wage rates and other terms of employment. *Apex Hosiery Co.* v. *Leader, supra,* at pp. 503–504. But if the Clayton Act should be construed to sanction agreement by a group of employers, written into a contract with a union, not to purchase goods made under a differing wage scale, then the Act would validate agreement between two powerful groups to monopolize supply in the local market, with the resulting inevitable enhancement of price, solely in furtherance of the respective interests of the two combining groups.

It is one thing to permit full scope to the use by labor of its collective bargaining power vis-a-vis employers. It is quite another to sanction agreements between employers and employees in which there is a mutuality of interest in restraining the trade of third persons. This would, in effect, substitute for the process of collective bargaining between the two groups—as envisaged,

protected and regulated by the Clayton Act and other allied statutes—a merging of their conflicting interests for the fashioning of a powerful economic instrumentality for restraining the trade of others. And while such a result might tend to eliminate disputes between employers and employees, it is not to be presumed that Congress regarded this consideration as paramount to all others.

We submit that there has been a decision by this Court contrary to the holding of the court below in the present case. Petitioners refer to four cases[1] in each of which this Court affirmed *per curiam* a decision of a district court holding that the indictment or the complaint did not set forth a cause of action under the Sherman Act, not within exemptions given by the Clayton Act. In none of these cases, however, was there a charge of a conspiracy between labor and non-labor groups. Each of these cases involved only a conspiracy by one or more labor organizations and their representatives to use various means, such as strikes, boycotts and threats thereof, to attain familiar labor objectives. Only in the *Hod Carriers* case were there allegations which raised even

[1] *United States* v. *United Brotherhood of Carpenters & Joiners of America*, 313 U. S. 539; *United States* v. *Building and Construction Trades Council, ibid.; United States* v. *International Hod Carriers & Common Laborers' District Council, ibid.; United States* v. *American Federation of Musicians*, 318 U. S. 741.

a question as to whether persons other than members of labor organizations were party to the conspiracy.

The charge in the *Hod Carriers* case was that two local labor organizations and certain of their representatives had conspired to prevent manufacturers in States other than Illinois from selling and shipping to the Chicago area truck mixers, machines useful in making concrete for street paving and building construction. It was a part of the conspiracy that, by means of strikes and threats to strike, the defendants prevented paving contractors and building contractors from using these machines and that, by means of strikes and threats of strike, the defendants "forced" paving contractors to enter into "working agreements" with one of the defendant labor organizations requiring the contractors using truck mixers "to employ the same number of men which they would employ if truck mixers were not used."[9] The indictment did not charge that the contractors were co-conspirators; under its allegations their relation to the conspiracy was that of unwilling victims. Furthermore, their compelled adherence to "working agreements" with the union did not go beyond agreement to

[9] See *United States* v. *Carrozzo*, 37 F. Supp. 191, 192–193 (N. D. Ill.), for a summary of the allegations of the indictment.

employ certain additional labor when the truck mixers were used. Obviously, in so far as there was agreement by the contractors, it was against their interest. In no real sense could this conspiracy be said to be one in which a non-labor group had joined forces with a labor group to impose restraints upon the interstate trade of third persons.

Subsequent to the decision in the *Hutcheson* case, the lower federal courts have held, for the most part, that combinations between labor and non-labor of the kind here involved fall within the interdict of the Sherman Act.[10] Such combinations have been held illegal in *Truck Drivers' Local No. 421, etc.* v. *United States*, 128 F. (2d) 227 (C. C. A. 8); *Albrecht* v. *Kinsella*, 119 F. (2d) 1003 (C. C. A. 7)[11]; *United States* v. *Central Supply Ass'n*, 40 F. Supp. 964 (N. D. Ohio); *United States* v. *Associated Plumbing & H. Merchants*, 38 F. Supp. 769 (W. D. Wash.); *United States* v. *New York Electrical Contrs. Ass'n.*, 42 F. Supp. 789 (S. D. N. Y.).

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[10] For like decisions prior to the *Hutcheson* case, see *Boyle* v. *United States*, 259 Fed. 803 (C. C. A. 7); *United States* v. *International Fur Workers Union*, 100 F. (2d) 541 (C. C. A. 2), certiorari denied, 306 U. S. 653. See also *Local 167* v. *United States*, 291 U. S. 293.

[11] In this case the court held that the combination would have been within the Sherman Act if it had been in restraint of interstate commerce but held that under the allegations of the complaint the commerce restrained was intrastate.

In the *Truck Drivers'* case, *supra,* the court said (128 F. (2d) 227, 232):

> if [a union and its members] undertake to act jointly with any non-labor group, whose object is to effect an illegal restraint of trade or commerce, and, as part of a concerted plan or effort, they agree or undertake to do any act, whose purpose may reasonably be construed to be directly intended to assist such non-labor group in accomplishing its illegal purpose, even though the result may also be beneficial to the position of labor, they may become subject to the operation of the Sherman Act. Thus, labor cannot seek to accomplish its legitimate objects through the illegal means of combining or conspiring with a non-labor group to fix or maintain prices on goods moving in interstate commerce without subjecting itself to the possibility of criminal prosecution under the provisions of the Sherman Act.

The only clearly contrary holding of the lower federal courts is *Allen Bradley Co.* v. *Local Union No. 3,* 145 F. (2d) 215 (C. C. A. 2), now before this Court on certiorari (No. 702, this Term), although some aspects of *United States* v. *B. Goedde & Co.,* 40 F. Supp. 523 (E. D. Ill.), may be viewed as contrary to the holding of the court below in the present case. Some of the petitioners also rely upon *Gundersheimer's, Inc.* v. *Bakery, etc., Union,* 119 F. 2d 205 (App. D. C.), where

the basis of a triple-damage suit under the Sherman Act was that the defendant union was, by means of a strike, enforcing a demand that the employer agree not to purchase products made in another city under a lower wage scale. The holding that these facts were insufficient to support the suit rested upon the ground that restraint of the commerce of a single concern did not have any actual or intended effect on market price or price competition and therefore was not, under the holding of this Court in the *Apex* case, a restraint of a kind prohibited by the Sherman Act. The question of the scope of labor's exemption under the Clayton Act was not reached.

II

THE CHARGE IN THE INDICTMENT THAT THE DEFENDANT MANUFACTURERS AND DEFENDANT UNIONS CONSPIRED TO PREVENT INTERSTATE SALE AND SHIPMENT INTO THE BAY AREA OF MILLWORK MADE UNDER A WAGE SCALE LOWER THAN THAT PREVAILING IN THE AREA, WITH THE PURPOSE AND EFFECT OF RAISING AND MAINTAINING PRICES IN THE AREA, SETS FORTH AN OFFENSE UNDER THE SHERMAN ACT

All of the petitioners before the Court have challenged the sufficiency of the indictment. The first question presented in this connection is the meaning of the indictment. We agree that in passing upon this question it is necessary to look to the indictment as a whole and to construe its various allegations in relation to each other.

Paragraphs 26 and 27 of the indictment (R. 26–28) charge that, substantially all the manufacturers of millwork in the Bay Area and the labor organizations which control the supply of labor used by such manufacturers combined together to prevent sale and shipment to the Bay Area of millwork made in States other than California and to raise and maintain prices for millwork so shipped. The allegations of means used in effectuating the conspiracy establish that the defendant unions participated in this agreement to restrain trade in return for the defendant manufacturers' assent to wage demands made by the unions (par. 28 (a), R. 28). The agreement to exclude took the form of agreement that the defendant manufacturers would not purchase and that members of the defendant unions would not work upon material made in plants not conforming to the wage rates and working conditions established for the Bay Area by agreement between the two groups (pars. 28 (b), (c), R. 28–29). The agreement, although not in terms directed at out-of-State products, would necessarily bar purchase thereof or work thereon since the wage scale of the out-of-State producers of millwork is alleged to be lower than that of the defendant manufacturers (par. 6, R. 8). The conspiracy included joint action by the manufacturer group and labor group in policing and enforcing the non-purchase and non-work agreement (pars.

28 (d)–(g), R. 29–30). In furtherance of the conspiracy lists of "agreed prices" to be charged for millwork in the Bay Area were circulated among millwork purchasers in that area (par. 28 (k), R. 31–32).

It is alleged and admitted by the demurrers that, following formation of the conspiracy, the proportion of millwork used in the Bay Area coming from outside the State of California fell from 80% to less than 10% (par. 4, R. 6–7) and that, as a result of the conspiracy, millwork prices in the Area have been unduly increased (par. 30, R. 33).

The indictment thus alleges a combination having both the effect and purpose of restraining commercial competition, controlling supply, and raising prices in an interstate market. For the reasons already stated (*supra*, pp. 22–27), such a conspiracy apart from any exemptions given by the Clayton Act, clearly violates the Sherman Act. It is therefore unnecessary to consider whether the indictment is to be construed as charging "price-fixing". At the very least it charges a conspiracy having the effect and purpose of raising prices, of a kind held illegal in *American Column & Lumber Co.* v. *United States*, 257 U. S. 377.[12]

[12] This is the purport of the extracts from the Government's briefs in the district court and the court below, quoted by petitioners in No. 668 (Br. 7, 11).

We submit that the conspiracy laid in the indictment could be regarded as not within the Sherman Act only if it should be held that when union defendants are parties to a conspiracy in restraint of interstate commerce, the fact that the conspiracy may further some interest of labor makes the restraint *per se* reasonable and beyond the reach of the Sherman Act. Such a holding would, as we have previously indicated, be inconsistent not only with the express policy underlying the Sherman Act but also with the settled judicial construction of the statute.[13]

As to the effect of the Clayton Act, we submit (1) that the indictment sets forth a combination in which labor joined with management to restrain competition, control supply, and raise prices, and (2) that such a combination is not within the immunities given by Section 20 of the Clayton Act.

The indictment alleges that the defendant unions agreed to engage in activities designed to prevent sale and shipment of millwork into the Bay Area "in return for" the manufacturers' assent to the unions' wage demands (R. 28).[14]

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[13] *E. g., Loewe* v. *Lawlor*, 208 U. S. 274; *Duplex Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Journeymen Stone Cutters' Assn.*, 274 U. S. 37; *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295.

[14] The indictment also alleges (R. 32):

"In joining the said combination, agreement, and conspiracy, and in performing and carrying out acts to effectuate the said conspiracy, the defendant unions were not attempting to enforce or protect the right to bargain col-

In effect, therefore, labor is charged with having agreed to give its aid in enforcing a ban against low-cost goods (made under a lower wage scale) in consideration of the manufacturers' acceptance of employment terms sought by labor. The reservation in the *Hutcheson* case concerning application of the Clayton Act when labor combines with a non-labor group to restrain trade (*supra*, pp. 29–30) would certainly seem to embrace combinations of labor and management having as their direct and primary objective restraint of the trade of third persons.[15]

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lectively nor did they act in the course of a legitimate labor dispute as to wages, hours, and working conditions or as to any other legitimate objective of labor, but solely to prevent the manufacturers against whom the said combination and conspiracy was directed from engaging in interstate commerce in millwork and patterned lumber in the San Francisco Bay Area and to maintain arbitrary, artificial, and noncompetitive prices."

The allegation that the unions were acting "solely" to prevent the importation of millwork and to maintain noncompetitive prices is one of fact, admitted by demurrer. (Compare allegations contained in paragraph 28 (a) of the indictment, R. 28.) It differs from the kind of allegation made in the *Hutcheson* case (312 U. S. 219) and in the *Building and Construction Trades Council, United Brotherhood,* and *Hod Carriers* cases (313 U. S. 539), that the respective labor union defendants were not, by their conspiracy, seeking a "legitimate" labor objective.

[15] The sufficiency of the evidence to support the allegations of the indictment is not questioned. If, therefore, the validity of the indictment should be sustained, the petitioners who stood trial would be entitled to no more than a new trial if this Court should hold that the instructions to the jury were erroneous.

III

THE DISTRICT COURT DID NOT ERR IN INSTRUCTING THE JURY AS TO THE LIABILITY OF THE LABOR UNIONS FOR THE ACTS OF THEIR OFFICERS OR AGENTS

The labor union petitioners contend that the trial court gave erroneous instructions to the jury with reference to the liability of a labor union for the acts of its agents. The instructions on this point were as follows (R. 1137–1138):

> You are to determine the guilt or innocence of a corporation by an examination of the acts done by its responsible officers or agents. The act of an agent done for or on behalf of a corporation and within the scope of his authority, or an act which an agent has assumed to do for a corporation while performing duties actually delegated to him, is deemed to be the act of the corporation.
>
> * * * * *
>
> Likewise, the list of defendants includes a number of labor union organizations * * *. It has been stipulated in this case that these labor unions are associations. Like corporations, associations are separate entities within the meaning of the Sherman Act, and may be found guilty of violations of that act, separately, and apart from the guilt or innocence of their members.
>
> You are to determine the guilt or innocence of the labor unions which are de-

> fendants in this case in the same manner as you determine that of the corporations, that is, by an examination of the acts of their agents.

These instructions, which permit a labor union to be held responsible for what it authorized its officers to do, correctly apply the principles governing the liability of corporate and labor organizations. This Court noted in *United States* v. *White*, 322 U. S. 694, 702, that the actions of a member bind a union only when "there is proof that the union authorized or ratified the acts in question". This statement reaffirmed the rule previously laid down by this Court in the *Coronado Coal* cases,[16] and given legislative sanction in Section 6 of the Norris-LaGuardia Act, 47 Stat. 71, 29 U. S. C., Sec. 106.

In the *Coronado* cases an international union was held not liable for the unlawful acts of members of a local, despite conduct by the international president supporting the local strike, because the international union's board had not authorized its president to support the strikers. In the first of the cases, the Court declared (259 U. S. at 395):

> A corporation is responsible for the wrongs committed by its agents in the

[16] *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Coronado Coal Co.* v. *United Mine Workers*, 269 U. S. 295.

> course of its business, and this principle is enforced against the contention that torts are *ultra vires* of the corporation. But it must be shown that it is in the business of the corporation. Surely no stricter rule can be enforced against an unincorporated organization like this. Here it is not a question of contract or of holding out an appearance of authority on which some third person acts. It is a mere question of actual agency * * *.

Section 6 of the Norris-LaGuardia Act provides:

> No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the United States for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of such acts, or ratification of such acts after actual knowledge thereof.

This section was designed to insure the application of the doctrines of the law of agency, and not the principle of the law of conspiracy "that every member of a conspiracy is responsible for every act committed by any other member of the conspiracy" (75 Cong. Rec. 4693).[17] It was evidently intended to prevent recurrence of decisions in which some courts had held unions and all their members re-

[17] Statement by Senator Walsh of the Committee on the Judiciary.

sponsible for the unlawful conduct of a few members, even though the latter was contrary to the advice of the union officials and expressly disavowed. S. Rep. No. 163, 72d Cong., 1st sess., pp. 19–20; see Frankfurter and Greene, *The Labor Injunction* (1930) 74–75.[18] The House Report explicitly stated that "this provision does not affect the general law of agency". H. Rep. No. 669, 72d Cong., 1st sess., p. 9. Senator Blaine, of the Committee on the Judiciary, declared that (75 Cong. Rec. 4629):

> Section 6 is to extend the sound law of agency which prevails in all other business transactions to the officers, the members, the agents of organized labor.

And Frankfurter and Greene said with reference to an identical precursor of Section 6: "This ap-

[18] The judicial rulings responsible for the provision were described by Frankfurter and Greene as follows (pp. 74–75): "* * * The union and its officers may repudiate the violent deeds, may solemnly disavow them, may importune the strikers to be orderly and law-abiding, and yet may be held. 'Authorization' has been found as a fact where the unlawful acts have been on such a large scale, and in point of time and place so connected with the admitted conduct of the strike, that it is impossible on the record here to view them in any other light than as done in furtherance of a common purpose and as part of a common plan'; where the union has failed to discipline the wrong-doer; where the union has granted strike benefits. Other courts, contrariwise, have held fast to general agency principles and have exacted the full quantum of proof normally required to establish the responsibility of one person for the acts of another."

plies accepted doctrines of agency to labor litigation" (*id.*, at 221).

The pertinent phrase of Section 6 in this case is "actual authorization of such acts." We do not believe this means express permission to perform a designated particular act; if that were what Congress had intended, the sponsors of the legislation would not have declared that the provision merely embodied the accepted principles of agency. An agent is "authorized", or "actually authorized", to perform an act when he is expressly or impliedly told or advised by his principal that he may engage in conduct of a class which comprehends that act. As Senator Wheeler stated on the Senate floor in explaining the bill (75 Cong. Rec. 4937)

> All we are contending with reference to the labor unions is that the labor unions shall not be enjoined because of the fact that somebody belonging to a labor organization does something that he is not authorized to do or something that is not within the scope of his employment.

A union cannot escape responsibility for the acts of officers authorized to enter into contracts for the union on the plea that only lawful contracts were authorized and that the charter does not expressly authorize the officers to violate the Sherman Act or any other law. A charter obviously never would contain such a provision, which would, in any event, be void. In short,

therefore, we submit that if an agent or official acts within the scope of his authority, that is, within the limits of what the principal or organization has authorized him to do on its behalf, he is doing what he has in fact or "actually" been authorized to do.

The charge to the jury permitted a verdict of guilty against the union defendant only if the jury found that the officers or agents had acted in behalf of the union and within the scope of their authority, or "while performing duties actually delegated" to them. This instruction is in accordance with the statutory requirement and the rule approved in the *Coronado* cases. If an act is "within the scope" of an agent's authority, he is actually authorized to do it. And the same clearly is true if he is "performing duties actually delegated to him".

The trial court did not commit error in refusing to give Requested Instructions Nos. 55, 56, and 57. Requested Instruction No. 55 was as follows (R. 1172–1173):

> You are instructed that an officer of a union which is an unincorporated association is not authorized merely by virtue of his office to make his union a party to an unlawful conspiracy. In order to bind any union organization, therefore, by the act of a representative or officer it is necessary to find that the union had authorized or ratified the act.

This request was substantially in the terms of the Norris-LaGuardia Act. The action of the trial court in refusing to give the instruction was proper for, as we have shown, the instruction given was in substance the same as that requested (R. 1137–1138). Petitioners asked for instructions stressing the necessity for authorization by the unions of the acts of their agents and such instructions were given. Assuming that the instructions are correct and complete, the manner of phrasing them rests within the discretion of the court. *United States* v. *General Motors Corporation*, 121 F. 2d 376, 409 (C. C. A. 7), certiorari denied, 314 U. S. 618.

Requested Instruction No. 56 is substantially to the same effect (R. 1173). Requested Instruction No. 57 is similar, but raises the further question whether in order to impute liability to the international body its authorization must be express. In *Washington Gas Light Co.* v. *Lansden*, 172 U. S. 534, this Court held that the authorization of a corporation may be implied. The Court said (p. 544):

> The corporation can be held responsible for acts which are not strictly within the corporate powers, but which were assumed to be performed for the corporation and by the corporate agents who were competent to employ the corporate powers actually exercised. There need be no written authority under seal nor vote of the corporation constituting the agency or authorizing the act.

> But in the absence of evidence of this nature there must be evidence of some facts from which the authority of the agent to act upon or in relation to the subject-matter involved may be fairly and legitimately inferred by the court or jury.

New York Central R. R. v. *United States,* 212 U. S. 481, 493–494, is to the same effect.

United States v. *International Fur Workers Union,* 100 F. 2d 541 (C. C. A. 2), certiorari denied, 306 U. S. 653, does not support the petitioners' contention. In that case the trial court charged that a union would be criminally liable if its officers acted "upon behalf of the unions." As this instruction excluded the issue whether the union had authorized or ratified what its officers had done, the Circuit Court of Appeals correctly held it to be erroneous. Obviously the unauthorized action of union officers cannot be chargeable to the union even if done "upon behalf of the union." In the present case, on the other hand, the instructions specifically covered the question of authorization.

Truck Drivers Local No. 421, etc. v. *United States,* 128 F. 2d 227 (C. C. A. 8), also lends no support to the petitioners' argument. The court there held that where, under the rules of the general union, the acts of a division must be approved by the union to make them binding on that body, the general union was not liable under the Sherman Act for unapproved action of the division.

The court made it clear, however, that the union was liable for action it had authorized, whether expressly or impliedly. The court said (pp. 235–236):

> To bind the union in a situation such as this, actual and authorized agency was necessary; mere apparent agency would not be sufficient to take the matter to the jury, unless the circumstances were so strong as competently to support an inference of actual authority.
>
> * * * * *
>
> We do not mean to imply that the union had to approve the action of the milkmen's division by formal motion or resolution. Such approval might perhaps legally be found to exist from actual knowledge and general sanction on the part of the union body of the efforts of the milkmen's division to cast the strength of the union into the situation.[19]

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[19] United Brotherhood (Br. p. 56) quotes out of context a statement in the concurring opinion of Clark, J., in *United States* v. *Local 807 of I. Brotherhood*, 118 F. 2d 684, 668 (C. C. A. 2), affirmed on other grounds, 315 U. S. 521. The full quotation is as follows:

"* * * I do not see how a conviction can be had against the unincorporated Local 807 under the Anti-Racketeering Act; in other words, 'person' in the act does not include such an amorphous group as this association of around 10,000 persons. It is hornbook law that, absent a clear legislative intent, an unincorpated association does not commit crimes, 7 C. J. S., Association, § 17, p. 43; and *Congress has often shown that it knows how to include an association as a person when it so desires, as in the Sherman and Clayton Acts* * * *." [Italics supplied.]

Section 6 of the Norris-La Guardia Act also provides that a labor organization shall not be responsible for the unlawful acts of its agents unless upon "clear proof" of actual authorization. This requirement, which applies to civil as well as to criminal cases, is, of course, no more stringent than the rule that guilt in a criminal case must be shown beyond a reasonable doubt. Yet the trial court in this case gave the customary charge as to proof beyond a reasonable doubt, and stated that "this rule applies to every material element of the offense charged", and also that this requirement "is to be considered in connection with and as accompanying all the instructions that are given to you". (R. 1145.)

Petitioners Alameda County Building and Construction Trades Council (No. 674) and United Brotherhood of Carpenters and Joiners of America (No. 666) also contend that there was no evidence from which the jury could have found that they were parties to the conspiracy.

With respect to Alameda County Building and Construction Trades Council, the evidence shows that it received letters from Local No. 550 referring to the agreement with the millmen (R. 446–447, 499, 499–500) and requesting the council's assistance in its enforcement (R. 446–447, 499). The minutes of the Council show that it agreed to do so (R. 499, 446–447), and in one instance at least actually participated in its en-

forcement, the representative of an Oregon firm being examined before the Council's Board of Business Agents for a hearing on whether the Oregon firm should be placed on the Council's "We do not patronize list". (R. 343, 345–347, 378–379).

With respect to the United Brotherhood, the evidence is as follows: Its constitution provides that the First General Vice-President "shall have charge and issue the label" (R. 413). In compliance with this provision, the written contracts of 1936 and 1938, each of which contained the restrictive agreement, were submitted to and approved by the First Vice-President (R. 414–415, 503–505, 444–446). The constitution also provides that the First Vice-President "shall have power to examine, approve or disapprove all local union, District Council, State Council or Provincial Council laws" (R. 413). In accordance with this provision there was submitted to the First Vice-President and, on May 26, 1939, approved by him, by-laws of Bay Counties District Council which provided in part (R. 416, 415):

> Article II. Section 1. It is agreed by the District Council that, in conformity with the agreement between the mill owners and millmen, the District Council will refuse to handle any material coming from any mill or shop that is working contrary to the prescribed number of hours contained in the foregoing Trade Rules, or are paying less

than the wage scale hereinbefore quoted

* * *

Before approving the December 1938 agreement and the 1939 by-laws of the Bay District Council, the First Vice-President (and also the Second Vice-President) had been advised that the local unions were refusing to install millwork manufactured outside of California by a union shop paying lesser wages than those prevailing in the Bay Area (R. 480–485). The evidence also shows that the United Brotherhood sent a representative who participated in the negotiations which resulted in the December 1938 agreement (R. 1037–1038, 533, 388). We submit, therefore, that there was substantial evidence to support the finding of the jury that both Alameda and the United Brotherhood were parties to the conspiracy.

CONCLUSION

For the above reasons the judgment below should be affirmed.

Respectfully submitted,

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FEBRUARY 1945.

U. S. GOVERNMENT PRINTING OFFICE: 1945